IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

CRL.A.No. 548 of 1998(B)

CC.131/1995 of JUDL.MAGISTRATE OF FIRST CLASS, VADAKARA
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APPELLANT:

MALAYIL HAMEED, S/O. AMMAD,
VAIKKILASSERY AMSOM DESOM BY
POWER OF ATTORNEY HOLDER,
MALAYIL KUTTIALY,
VAIKKILASSERY AMSOM DESOM,
(PO) VAIKKILASSERY,
(VIA) VADAKARA.

BY ADV. SRI.C.VATHSALAN
SRI. P.M. SHAJI

RESPONDENTS:
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1. P. SAJIDA, D/O. ABDUL KHADER,
PONANTAVIDA HOUSE,
SEETHI SAHIB ROAD,
CHIRAKKARA, THALASSERY.

2. STATE OF KERALA REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA

BY/

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 18/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.A.No.548 of 1998

Dated this the 18th day of June, 2007

JUDGMENT

The appellant is the complainant in C.C.No.131/95 with respect to the offence under Section 138 of the Negotiable Instruments Act.

2. The prosecution case is that the accused towards discharge of liability issued the impugned cheque for Rs.40,000/- drawn on Thalassery Co-operative Urban Bank Ltd. and that the cheque when presented got bounced as the accused issued stop payment order. All the same, there was no sufficient funds in the account of the accused nor was the amount paid despite notice received.

3. The evidence adduced in the matter consisted the testimony of PWs' 1 and 2 and Exts. P1 to P7. The defence examined are DWs' 1 and 2 and got marked Exts. D1 and D2. PW1 who is the power of attorney holder and the brother of the complainant has testified as to the alleged borrowal. He has stated that he was present when the amount was borrowed. He

has also proved Exts. P1 to P6 documents as to the receipt of dishonour memo, lawyer notice sent, postal receipt and postal acknowledgment. PW2, the bank manager, has proved Ext. P7 ledger extract of the account of the accused which showed that there was no sufficient funds in the account of the accused.

4. The court below has relied on the evidence of DWs' 1 and 2 to hold that the prosecution has failed to establish the offence alleged. DW1 is an advocate practicing at Thalassery who was the junior of the advocate appearing for the accused at the time. Subsequently the particular advocate avoided the vakalath of the accused. The evidence of DW1 who was representing the accused is that on 11.11.1996 the accused handed over a letter to him allegedly written by the complainant wherein the complainant had threatened her that she should see that the amount due from her father is paid back and in case of default, the matter will be informed to her husband and he will see that her entire family is ruined. DW1 has deposed that the complainant at the time when he was reading the letter grabbed the same from his hands and swallowed it. He has filed a complaint before the police. Ext. D1 is the cover of the letter

addressed to the accused from the complainant. DW2, the Sub Inspector of Police, has proved Ext. D1 and was deposed that the matter was enquired into and that the complainant was summoned and issued and the matter was closed. The court below found from the evidence of DW1 and DW2 that the evidence of complainant as to the liability due from the accused has not been established beyond reasonable doubt. In the circumstances, I find that the decision of the court below is supported by proper reasons. There is no grounds to interfere.

The appeal is dismissed.

K.R.UDAYABHANU,
JUDGE

csl